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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 19, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

WAI CONSTRUCTION GROUP, LLC.,

No. 4:23-CV-05091-MKD

Plaintiff,

ORDER DENYING PLAINTIFF'S
SECOND MOTION FOR DEFAULT
JUDGMENT

v.
WAVE QUANTUM, INC., HARVEY
PRICKETT,

ECF No. 23

Defendants.

Before the Court is Plaintiff's Second Motion for Default Judgment. ECF No.

23. For the following reasons, the Court denies the motion.

Plaintiff filed a Second Amended Complaint on July 18, 2024. ECF No. 21.

Plaintiff contemporaneously filed the instant motion for default judgment. ECF No.

23. However, because Plaintiff has not filed proofs of service of the Second

Amended Complaint and the Clerk has not entered default on Plaintiff's Second

Amended Complaint, Plaintiff's motion is premature. *See ThermoLife Int'l, LLC v.*

Sechel Holdings, Inc., 2015 WL 1521779, at *2 (D. Ariz. Apr. 3, 2015) ("In this

case, the Clerk of Court entered default on Plaintiff's *original* complaint. At this

ORDER - 1

1 time, default has not been entered on Plaintiff's *Amended Complaint*. Consequently,
2 default judgment on the Amended Complaint would be improper because no default
3 has been entered on the Amended Complaint.") (citation omitted); *id.* at *1
4 ("Because Plaintiff's original complaint no longer performs any function, a default
5 based on the original complaint must also be rendered ineffectual and non-existent.")
6 (citation and internal quotation marks omitted).

7 Before the Court may consider a motion for default judgment, Plaintiff must:
8 (1) serve the Second Amended Complaint; (2) file proofs of service of the same; and
9 (3) at the proper time, if Defendants fail to respond, move the Clerk for entry of
10 default on the Second Amended Complaint, consistent with Federal Rule of Civil
11 Procedure 55.

12 Accordingly, **IT IS HEREBY ORDERED:**

13 1. Plaintiff's Second Motion for Default Judgment, **ECF No. 23**, is
14 **DENIED**.

15 **IT IS SO ORDERED.** The District Court Executive is directed to file this
16 order and provide copies to counsel.

17 DATED July 19, 2024.

18 *s/Mary K. Dimke*
19 MARY K. DIMKE
20 UNITED STATES DISTRICT JUDGE